

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRY THOMAS,

Petitioner,

CIVIL CASE NO. 99-40168

v.

DAVID SMITH,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Respondent.

_____ /

ORDER DENYING PETITIONER'S CERTIFICATE OF APPEALABILITY

Petitioner has filed a motion for certificate of appealability ("COA"). Before Petitioner may appeal this Court's dispositive decision, a COA must issue. 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). The Court must either issue a COA indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b).

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.' " *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880 at 893, n.4 (1983)). In applying the above standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Miller-El v. Cockrell*, 537 U.S. 322, 336-37 (2003).

The Court has conducted a threshold inquiry into each of Petitioner's claims individually to

ascertain if any one or more claims meet the requisite standard. Following this inquiry, the Court determines that Petitioner has not made a substantial showing of the denial of a constitutional right with respect to any of the claims presented and therefore should not receive any encouragement to proceed further. *See* 28 U.S.C. § 2253(c)(2); *Slack*, 529 U.S. at 484.

Accordingly, **IT IS HEREBY ORDERED** that Petitioner's motion for a COA [docket entry 21] is **DENIED**. Given this determination, the Court also **DENIES AS MOOT** Petitioner's application for leave to proceed on appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a).

Petitioner has also filed a "Motion for Guidance," in which he requests that the Court provide him advice as to whether he can present his ineffective assistance of counsel claim to the district court. As this case has been appealed to the Court of Appeals for the Sixth Circuit, at the moment no issue properly remains before this Court for a determination. Consequently, the Court **DENIES AS MOOT** Petitioner's motion for guidance [docket entry 30].

SO ORDERED.

Dated: November 29, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on November 29, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Debra M. Gagliardi, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Derry Thomas.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845